SANITARY LEGISLATION.

COURT DECISIONS.

NEW JERSEY SUPREME COURT.

Heroin Not Included in the Terms of the New Jersey Statute Prohibiting the Sale of Habit-Forming Drugs.

STATE *v.* NORWOOD, 93 Atl. Rep., 683. (Mar. 23, 1915.)

The New Jersey statute prohibiting the sale of morphine except upon a physician's prescription does not include heroin as one of the prohibited habit-forming drugs therein specifically referred to.

The act, being penal in its consequences, will not receive a construction which will enlarge its specific scope.

Where the defendant denied the sale of the drug and testified that he had given specific orders to his clerk to sell no habit-forming drugs, and that he was not aware until a recent period that the drug in question was included in that category, a direction of conviction was therefore erroneous.

MINTURN, J.: The conviction of the defendant was based upon an indictment which charged him with selling morphine, and at the conclusion of the trial the court directed the jury to return a verdict of guilty, from which conviction this writ of error is taken. The act upon which the indictment is based is a supplement to the crimes act (P. L. 1908, p. 399), and reads as follows:

"Any person who shall sell, give away, furnish, or dispose of the alkaloid cocaine, or its salt, alpha or beta eucaine, or their salts, opium, morphine, codine, chloral, or any of the derivatives of chloral, or who shall sell, give away, furnish, or dispose of any admixtures of cocaine or eucaine or any patent or proprietary remedy containing cocaine or eucaine, except on the written prescription of a duly licensed and practicing physician, shall be guilty of a misdemeanor."

The defendant is a druggist in Jersey City and a graduate of a recognized college of pharmacy. The alleged commission of the offense charged in the indictment consisted in the fact that a clerk in the defendant's employ, upon the day mentioned in the indictment, sold a bottle containing 100 tablets, each tablet containing one-twelfth of a grain of "heroin," to one Courtney. The clerk when employed had been instructed by defendant not to sell drugs contrary to law. Courtney, it seems, had made prior purchases of the drug at the defendant's store, but defendant testified that when those sales were made he was not informed that "heroin" was included in the category of habit-forming drugs, and it is inferable from the testimony that the general discovery of that fact has been only of comparatively recent date.

To bring the commission of the offense within the language of the statute the State offered expert testimony to show that "heroin" is in fact morphine. Expert chemists in behalf of the defendant testified that "heroin" and morphine are two distinct drugs, the latter being a very old alkaloid and the former a comparatively recent derivative of morphine, and that each responds differently to recognized chemical tests. It was also in evidence that the two drugs respond differently on the human system, and that "heroin" may be used with benefit for throat ailments. We do not deem it necessary to say more in the disposition of the case than that the statute in question does not include in its categorical statement of the inhibited habit-forming drugs the drug known as "heroin."

If it were known and in existence by name as a habit-forming drug at the time of the enactment of the prohibiting law, it must be assumed that the legislature purposely excluded it. If it were not known and not in existence at that period, it is equally manifest that the legislature did not have it in mind for condemnation in its generic designation of habit-forming drugs. The act is penal in its object and consequences and under familiar rules of statutory construction can not be enlarged by judicial construction to include subjects and cases which upon its face are literally excluded. (Black on Interpretation, 286; Lair *v.* Killmer, 25 N. J. Law, 527; State *v.* Woodruff, 68 N. J. Law, 89, 52, Atl., 294.)

But if it were conceded that the language of the act included "heroin" among the derivatives of the drugs therein specifically condemned, the difficulty of sustaining this conviction inheres in the fact that the defendant personally did not sell the drug; that he had given orders to his clerk not to sell habit-forming drugs; and that when he learned that this drug was included in the category of habit-forming drugs he ceased to sell it. This testimony presented an issue of fact as to the defendant's guilt which should have been left to the jury to determine.

The judgment of conviction will therefore be reversed.

COLORADO SUPREME COURT.

Cocaine, Sale of—Evidence Insufficient to Convict.

STADLER v. PEOPLE, 147 Pac. Rep., 658. (Apr. 5, 1915.)

The evidence in this case was held not to be sufficient to prove that the powder sold by the defendant contained cocaine.

SCOTT, J.: The plaintiff in error was convicted in the county court of Ouray County, upon an information charging as follows:

"Lester C. Stadler, late of the county of Ouray, State of Colorado, on or about the 19th day of July, in the year of our Lord 1912, at and within the county aforesaid, did unlawfully sell to one Ralph M. Williams a certain compound, mixture, and product of which the salts of cocaine was constituent and ingredient."

The assignments of error, sought to be considered in the determination of this case, are: (1) That if there was any offense committed, it was solely at the instigation and inducement of the sheriff of the county, and for such reason there can be no conviction; (2) that the evidence is insufficient to sustain a conviction.

It appears that the plaintiff in error was, at the time of trial, a physician of some 30 years' practice, 18 of which had been in the city of Ouray, in the said county.

The testimony of the people is to the effect that R. A. McKnight, sheriff of Ouray County, procured one Ralph Williams, who admits that he is given to the use of cocaine and liquor, to go to the office of the defendant and purchase cocaine. For this purpose the sheriff gave Williams $1 with which to make the purchase. The sheriff then procured one Humphries, who was the town marshal of Ouray, to be present when Williams should go to the physician's office, with instructions that upon his return to the street he was to receive from Williams the cocaine so intended to be purchased. Williams went to the physicians' office, which was in the upper story of the building occupied by him, and upon returning and after reaching the street, Humphries met him and took the powder from his pocket, which it is claimed contained cocaine. The sheriff, Williams, and Humphries, all understood before the occurrence the part that each was to play in the transaction. Williams says that he went to the doctor's office and said to him, "What is the chance to get a dollar's worth of cocaine?" to this he says the doctor replied, "I guess it will be all right," and then went into another room and procured the powder for which Williams paid him the dollar given him by the sheriff and went out. Upon cross-examination, Williams three times contradicts his testimony in this respect, and says that he did not mention cocaine, but asked for "some stuff"; that he did not give any name at all; again that he "wanted some of that stuff for his lady